

LAKE COUNTY BOARD of ADJUSTMENT
April 12, 2017
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise, Mary Jensen

STAFF PRESENT: Jacob Feistner, Rob Edington, Wad Humphries, Lita Fonda, Wally Congdon (5:10 pm)

Frank Mutch called the meeting to order at 4:00 pm

REDHORN DENSITY VARIANCE (4:01 pm)

Rob Edington presented the staff report. (See attachments to minutes in the April 2017 meeting file for staff report.)

Tiffani Murphy, the Carstens representative for the owner, thought the proposal had been covered pretty well. They would not increase what was there. They would remove the center home and move it to the other side so things were not as congested.

Rob confirmed for Frank that issues with access or other development would come before the subdivision decision makers. Tiffani said access was discussed at a recent pre-application meeting. No major concerns came up in that discussion. Steve verified with Tiffani that the center home would actually be torn down and a new home would be constructed.

Public comment opened:

Chantel Wold McCauley was concerned as a sharer of the fence line. She was here to listen to the discussion rather than to comment. She would talk directly to the owner.

Public comment closed.

Steve thought that especially close to the intersection with Hwy 93, where there were commercial activities and other small lots, it was not an unrealistic request.

Motion made by Frank Mutch, and seconded by Merle Parise, to approve the variance subject to the findings and conditions in the staff report. Motion carried, all in favor.

CHERRY PINES CONDITIONAL USE—EAST SHORE (4:16 pm)

Wade Humphries presented the staff report. (See attachments to minutes in the April 2017 meeting file for staff report.) The report included a staff recommendation to table the request until the May meeting to allow for a properly noticed review of the compliance of the business with the East Shore zoning regulations.

In response to Frank's questions, Wade explained that although staff requested the information, no evidence was available that these were rented prior to Sept 1, 1991 when the zoning regulations were put into place. The state accommodations license was first obtained in 2010. He wasn't sure when the State accommodations law was enacted, although he could get back to Frank with that information at a later date. He clarified that 'seasonal residence' referred to occupation by the owner seasonally. He pointed to the conditional use section V.J on pg. 8 [of the zoning, and pg. 2 of the staff report] to clarify what was needed for independent rental of more than one dwelling unit on a residential property in this zoning district. Frank said that allowed the owner to live in the house and rent the other buildings out.

In response to Steve's questions, Wade corrected the date on pg. 2, item A from Sept. 1, 1994 to Sept. 1, 1991. He clarified that permit number ES 05-09 was the ninth in 2005. [Today's] proposal was not being reviewed for a conditional use under V.J. The owner needed to apply for that. In that application, a new site plan would include both lots. Staff recommended tabling this so they could be given the information for conditional use for V.J if the applicant so chose. He confirmed for Mary that this would come back to the Board for review.

Steve had questions about the information for the upcoming application, including where the other lot and buildings were. Tiffani Murphy, the agent from Carstens, showed the site plan that the Board would see after this was tabled and they came back to the Board. Wade reiterated that staff recommended tabling this for now and that they review both V.J and V.C next time, in the May meeting. They weren't reviewing both now.

Steve said he brought this up because if all 4 cabins were on a single lot, and one lot was transferred to another owner then the density would be wrong. Because the buildings were divided with 2 buildings on each lot, they could conclude it met the density requirements. That was why he wanted to know where the cabins were. Wade said that if one of the individual lots was sold down the road, it would no longer be a part of Cherry Pines on Flathead Lake, LLC. Their short term rentals would still meet the 2.5-acre density because each lot was over 5 acres, and, Steve appended, only had 2 dwellings on each lot.

Jacob said when they reviewed that, they felt it was an appropriate direction to go. Staff viewed this meeting as kind of like the layout shot for the long par 5, for next month. They wanted to let the Board know that this had been applied for and noticed, and would be coming back. They felt it was appropriate and wanted to make sure they did it right.

Wade verified for Steve that the two cabin pictures in attachment #3 were of the same cabin, which was the subject of the original application. They would do another site visit with the additional conditional use. He answered for Merle that if one of the lots were sold, a boundary line adjustment would not be required for clarification.

Don asked for explanation of lot B of the amended plat of lots 7 and 8. The people who owned lot 7 weren't involved. Wade suspected there had been some jockeying of

property lines between lots 7 and 8, where lot B came into being. Lot A was probably out there somewhere as well and comprised the rest of whatever got changes. Tiffani mentioned a boundary line adjustment between lots 7 and 8, such that it became lot A of the amended plat and lot B. Don asked when that was done. Jacob replied it was recorded in May 2007. Don said when the owners of lot 7 got notice, they wondered where lot 7 got involved. Tiffani said they contacted her and had that discussion.

Jacob explained that the governing body mentioned in #8 on pg. 9 referred to the Commissioners, in response to Frank's question.

Marc Carstens said they frequently saw the type of thing where a rental situation existed prior to the need of being licensed, and the property has passed hands a few times without it coming to anyone's attention that the situation might need licensing because of something that happened in the interim. Tiffani mentioned the word of mouth from the neighbors was that they were told this was rented far prior to the zoning. It wasn't legally licensed prior to the zoning. Frank thought that was worth pursuing. Wade said they were trying to nail that down. The agent worked hard looking for verifiable evidence prior to 1994 or 1991.

Tiffani indicated they were in accord with tabling this until next month's meeting. Marc noted these matters were often complicated and even more so when it stretched over time. From their standpoint, they weren't disappointed to table this and come back to re-review it. He thought they'd had about 35 minutes of pertinent discussion about this project that they wouldn't have to have next time. It was like a preliminary hearing on a major subdivision. They would leave with thoughts, ideas and concerns that they would be able to address and then bring back [before the Board next month].

Wade clarified for Frank that if they received a conditional use application for V.J, it would come back as a conditional use for the business itself and the conditional use for the expansion of the one cabin. Frank was concerned about expense. Jacob reminded that there were unpermitted uses here. From [the County] standpoint, they were in violation. The reason to table this was otherwise staff would have to recommend denial. Staff wanted to work with them to get to approval but they needed to come back next month to do it. It might cost for review, but they were trying to work with the applicants to get them approved.

Steve thought it helped the Board to know when someone applied for an after-the-fact process. They've had to admit to a mistake and it cost them something [extra]. As a Board member and citizen, he'd like to know some effort went in to enforcing those things that would encourage people to do the right thing at the beginning instead of doing what they wanted and asking for permission later. Mary agreed. Jacob said if it was called after-the-fact in the staff report, it had been addressed as after-the-fact and they'd paid extra.

Steve checked that next time, 2 conditional uses would be considered for the applicant. Wade said today's conditional use for the expansion of the business was application FP

17-04. The conditional use for V.J would have a different number, such as FP 17-06. These would be separate conditional uses with separate numbers. Staff recommended that the applicants apply for the additional conditional use.

Steve noticed the paved driveway sections within the setback were drawn in, but not those outside the setbacks. The inside portions were the ones used for the impervious surfaces. The reality was that it was helpful to know the total impervious surface for evaluating stormwater. It wasn't a requirement but it was something he'd like to know.

Marc Carstens perceived a concern about people coming in after the fact and asking for forgiveness rather than asking for permission in the first place. In this particular instance, this wasn't what happened. These people bought something that had been an ongoing enterprise that was poorly documented and not necessarily legal. He understood 'buyer beware'. These owners didn't build the structures and were trying to right a wrong that they inherited. He compared it to someone that thumbed his nose and built something and asked for forgiveness. These people inherited the situation rather than creating it and they were trying to right it. As far as the impervious surface outside the building envelope, that wasn't a regulatory calculation. If he showed it on there, people who didn't understand that it wasn't a regulatory calculation might try to lump it together and face a state of confusion on the matter. Steve said that was why he suggested something like dotted lines or hash marks to show it wasn't included. Marc continued that many times with this sort of map, they were looking for a stormwater management plan on new and increased impervious surfaces. They weren't really charged with stormwater plans on existing impervious surfaces in many instances.

Steve said they often got people in who relied on their contractors to get the right permits and the contractors hadn't. It didn't mean the owner wasn't responsible for the fact that their contractor did it wrong. It was like you couldn't get out of the speeding ticket by saying you hadn't seen the sign. Knowing what was going on from both the applicants' point of view and the staff's point of view helped the Board know what the situation was and some of the background. Marc said if these current owners had not requested the ability to increase the size of the cabin and set forth to do it legally, this matter would not be here. It would still be submerged.

Wade gave the purchase date of the property as 2007 for Mary. Mary said for 3 years, they conducted a business without actually having a license or assuming they had it. Wade explained there was no solid documentation that any of the buildings were rented prior to 2010. It came to light and he believed Environmental Health mandated that they get the accommodations license. Tiffani noted that they were also upgrading the septic permits to bring the septic permits into compliance as well as the cabins. The owners were making efforts to fix every aspect.

Frank thought the history from the neighbors would be helpful. Referring to Steve's analogy, he thought that the traffic rules were clear through signs etcetera. With things like this, you got a place that had always been rented; you didn't have an idea unless you were looking to find out if you were legal.

Marc thought it was notable to the character of the owners that when things were brought to their attention, they set about fixing them. They'd been receptive to what needed to be done. Steve said they were to be commended for that. Don said a lot of things the Board received were things where the owners had the property prior to things happening. They finally discovered that they were in error and many of them then did apply to be legal. It worked both ways. Marc said he found this Board tried in every way to be as professional and cooperative as possible.

General discussion about the appropriateness of contact with a Board member prior to a meeting occurred. Jacob reminded of Wally's comments that a meeting must not only be fair but appear fair. If it came out at a Board meeting that the agent had been in contact with a Board member outside the Board meeting, it could appear unfair to the other party.

Motion made by Frank Mutch, and seconded by Don Patterson, to table the conditional use. Motion carried, all in favor.

BYLAWS AMENDMENT (Tabled from 3/8/17) (5:04 pm)

Jacob Feistner headed the discussion on the previously tabled bylaws. (See attachments to minutes in the April 2017 meeting file for staff memorandum.)

Jacob explained that floodplain variances went to the Commissioners, in response to Frank's question, regarding the removal of the wording on pg. 1. Frank suggested changes on pg. 3. In vi.B, 'limited. At' became 'limited at', a period replaced the comma after 'Chairperson' and 'the' following the comma was capitalized, and 'both' changed to 'all'. In vi.D, 'to orderly' became 'to the orderly'. In viii, 'Any' changed to 'All', a period was added after 'Board' in the first line and the rest of the sentence was eliminated, and the final period in viii was changed to a comma followed by 'or if such information is inappropriate.' He asked if 'heard' might be more appropriate than 'accepted' in ix or if it mattered. In ix, 'both' changed to 'all'. In x, 'applicant or staff' changed to 'applicant, staff or public'. In xiii, 'or made' was added after 'discussed'. In c. at the bottom of the page, 'a previous meeting' changed to 'that previous meeting'. On pg. 4, he asked the Board if they wanted to change 6.b. Steve explained that this was a requirement from the MCA. He commented to ix, that the Board needed to consider written public comments that might not be heard. The word 'accepted' covered both oral and written. 'Accepted' meant they allowed the comment to be made. Merle agreed. This was not changed.

Motion made by Frank Mutch, and seconded by Mary Jensen, to approve the Bylaws as modified. Motion carried, all in favor.

Frank asked if the group thought abstention and recusal should be covered in the bylaws. Steve thought using other kinds of guidance other than the bylaws would be a little more flexible and grey areas would be hard to cover in writing. Frank summarized they wouldn't bring that up in the immediate future.

MINUTES (5:12 pm)

June 18, 2016 minutes: Steve gave a correction on pg. 1. The one-sentence second paragraph of the Strainer item changed to, “James Strainer thought that Jacob covered the situation and declined to make additional comments.” **Motion made by Steve Rosso and seconded by Merle Parise, to approve the June 18, 2016 meeting minutes as amended. Motion carried, 3 in favor (Merle Parise, Don Patterson, Steve Rosso) and 2 abstentions (Mary Jensen, Frank Mutch).**

November 9, 2016 minutes: Frank and Steve offered the following corrections. On pg. 1, ‘affected’ in the second paragraph of the Troyer item changed to ‘influenced’. On pg. 2, in the first line of the paragraph after the motion, ‘to the Density Map & Regulations’ was added after ‘standard objection’. On pg. 11, in the 2nd line of the 3rd paragraph, ‘full agreed’ was corrected to ‘fully agreed’, and in the 8th line of the 4th paragraph, ‘design-built’ changed to ‘design-build’. On pg. 14 in the first line, ‘Ross’ was corrected to Rosso. **Motion made by Steve Rosso, and seconded by Don Patterson, to approve the Nov. 9, 2016 meeting minutes as amended. Motion carried, 3 in favor (Merle Parise, Frank Mutch, Steve Rosso) and 2 abstentions (Mary Jensen, Don Patterson).**

February 8, 2017 minutes: Steve and Frank gave the following corrections. On pg. 2 in the 7th line of the next-to-last paragraph, PLU changed to POU. On pg. 3, in the 2nd line of the 2nd paragraph of ‘Other Business’, ‘one should leave the Board’ changed to ‘one should move from the Board table’. **Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the Feb. 8, 2017 meeting minutes as amended. Motion carried, all in favor.**

March 8, 2017 minutes: Frank, Steve and Rob offered the following corrections. A sentence was added just prior to the Serra item that “Steve Rosso returned to the Board table.” In the 3rd line of the last paragraph on pg. 4, ‘of zoning regulations’ was added after ‘set’. In the last sentence of the first paragraph on pg. 5, ‘have come back’ changed to ‘have to come back’. In the 6th line of the first paragraph on pg. 7, ‘500 feet’ changed to ‘500 square feet’. Also, in the 3rd line of the last paragraph of that page, ‘boring lock’ changed to ‘boring log’. In the fourth paragraph on pg. 8, ‘trailer shown in a photo’ changed to ‘trailers shown on the site plan.’ In the 5th line of the last paragraph on pg. 8, ‘MCS’ changed to ‘MSE’ and ‘mechanic with stabilized earth’ was changed to ‘mechanically stabilized earth’ and put in parentheses rather than after a colon. On pg. 9 in the first public comment paragraph, “Hi Concern” changed to ‘His concern’. **Motion made by Steve Rosso, and seconded by Don Patterson, to approve the March 8, 2017 meeting minutes as amended. Motion carried, 4 in favor (Don Patterson, Frank Mutch, Steve Rosso, Mary Jensen) and one abstention (Merle Parise).**

OTHER BUSINESS (5:29 pm)

With Wally Condgon, County Attorney, the group revisited the question from an agent if it was appropriate to contact with Board of Adjustment members outside of a meeting. He said it really wasn’t. When making a decision, especially a quasi-judicial such as a decision on a variance, it had to appear to be fair and be in the record. If what got told to the Board was not in the record, the party was over. Members described site visits where

they inadvertently met the owner or the contractor, which the involved member disclosed at the pertinent meeting. Wally said [the disclosure] helped. It made it defensible because it wasn't intentional or by invitation. The group discussed that it was appropriate to identify oneself as a Board member in those circumstances. It was also okay to take photos, which could become part of the record through the planners. Jacob checked with Wally that this would be public comment from a Board member. Wally said it was information that affected the decision.

Frank Mutch, chair, adjourned the meeting at 5:39 pm.